DATO' SERI S. SAMY VELLU

v.

VEERASAMY A/L PERUMAL & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
DATO' ABDUL AZIZ BIN MOHAMAD J.
[ORIGINATING MOTION NO: S3-25-28-1994]
2 DECEMBER 1994

PRACTICE & PROCEDURE*: O. 52 r.3 RHC - Contempt - Application for order of committal - Wilful breach of injunction order by 1st respondent/chief editor of newspaper - Continual publication of defamatory allegations - Whether matters published caught by injunction - 1st respondent unrepentant - Committal to prison until discharge by the Court - Order 52 r. 70 RHC.*

On 2 June 1994, the applicant applied for an order of committal against the 1st respondent on the ground that the 1st respondent was in contempt of Court for breaching an injunction order which *inter alia*; restrained the respondents from further publishing defamatory allegations concerning the applicant's alleged involvement in the purported allotment of 10 million Syarikat Telekom shares to Maika Holdings Bhd. The Federal Treasury had initially allotted 10 million Syarikat Telekom Malaysia shares to Maika Holdings Bhd but had subsequently cancelled the original allotment and instead allotted 1 million shares only to Maika and the other 9 million shares equally to 3 other companies which the respondents alleged was controlled by the applicant.

In the applicant's application for leave to make the present application, it was contended that the respondent had defied the injunction order by three publications in Majalah Thootan but the grounds on which the applicant sought the respondent's committal related to publications in three subsequent issues of Majalah Thootan or Akhbar Toothan, as it was later known. In order to ascertain whether the matters published were caught by the injunction, the Court relied on English translations provided to the applicant by a Court interpreter as the publications were in the Tamil language but the accuracy of the said translations was disputed by the 1st respondent.

In cross-examination the 1st respondent who was the chief editor of the newspaper at the time of the 3 publications admitted that he made decisions as to the matters that were to be published and had read the news items in question prior to publication.

The issue was whether the 1st respondent was in contempt of Court.

Held:

[1] The injunction ought to be reasonably and honestly construed, not only according to its precise literal terms but also in the light of the circumstances that led to the necessity of obtaining it. The 1st respondent must have known that the purpose of the injunction was to prevent the publication of further defamatory allegations about the applicant concerning the affair of the 10 million Telekom shares that were originally allotted to Maika and that such allegations could only arise from what happened subsequently to those shares and could not arise just from their original allotment to Maika. Knowing that, he went ahead to publish the news items, either in total disregard of the injunction or hoping that the purpose

of the injunction could be defeated by the kind of sly and crooked interpretation that he was seeking to rely on. In either case, he had acted wilfully and with determination to disobey the injunction. He was contumacious.

[2] The 1st respondent had committed contempt of Court. His offence was compounded and aggravated by the fact that in spite of having been served with the order granting the applicant leave to apply for committal and warned by the applicant's solicitors not to publish further articles about the applicant and the Telekom shares, the respondent had continued to publish further matters in the newspaper on 1 June 1994. The respondent had been determined to continue publishing attacks on the applicant inspite and in disregard of the Court order. In the witness box he did not appear at all repentant. The Court therefore ordered that the respondent be committed to prison until such time as the Court, on his application under O. 52 r. 7(1) should see fit to discharge him.

[Application allowed]

Legislation referred to:
Rules of the High Court 1980, O. 52 rr. 2(2),3

For the applicant - R.K. Nathan; M/s R.K. Nathan & Co.
for the respondent - M.A. Vadiveloo; M/s. Vadiveloo & Co.

JUDGMENT

Abdul Aziz bin Mohamad J:
On 2 June 1994 the applicant filed this application under O. 52 r. 3 of the Rules of the High Court 1980 for an order of committal against the first respondent Veerasamy a/l Perumal ("the respondent") to punish him for contempt of Court which, according to the notice of motion by which, this application was made, consisted in "breaching and/or disobeying and/or aiding and abetting the breach and/or disobedience" of an order made by Wan Mohamad Mustapha J on 25 May 1992 in Civil Suit No. Sl-23-44-1992 against both the respondents, the defendants in that civil suit, which was in the following terms:

> ...that the defendants, their servants or agents or otherwise be restrained and an injunction is hereby granted restraining the defendants or each of them whether by themselves or by their servants or agents or otherwise from:
>
> (a) further writing of, printing or in any manner howsoever publishing of and concerning the plaintiff any matters relating to his alleged involvement in the purported allotment of 10 Million Syarikat Telekom shares to Maika Holdings Bhd on or about October 1990, ...

There were other acts subject to restraint in paragraph (b), but I am not quoting that paragraph because learned Counsel for the applicant admitted in his submission that he did not need to rely on it.

It was an interim injunction obtained ex *parte.*

An application by the respondent to set aside the order was dismissed by Rahmah Hussein JC on 30 June 1992 after full argument. An appeal by the respondent against her decision was dismissed by the Supreme Court on 23 November 1993.

The applicant's *ex parte* application for leave to make this application was filed on 24 May 1994. In his affidavit in support of that application, the applicant said that the respondent had defied the order by three publications in Majalah Thoothan on 24 January, 14 February

and 9 May 1993 and that on 22 June 1993 the applicant had already obtained leave to apply for an order of committal, but he did not proceed to apply for an order of committal because the respondent had then ceased to "comment" about the applicant. The respondent, however, renewed his attacks against the applicant in the newspaper Thina Murasu, after the respondent became its editor, and subsequently again in Majalah Thoothan.

In the statement in support of the applicant's application for leave of 24 May 1994, which is required by O. 52 r. 2(2), the grounds on which the applicant seeks the respondent's committal relate to the later publications in three issues of Majalah Thoothan, namely, those of 13 April, 20 April and 25 May 1994. It was actually a newspaper, not a magazine. The 13 April and 20 April issues bear the name "Akhbar Thoothan".

The application for leave was granted on 24 May 1994. This application followed on 2 June 1994.

To see whether the matters published on those three days are caught by the injunction, it is necessary to know the events that gave rise to the controversy that led to the applicant suing the respondent in Civil Suit No. Sl-23-44-1992. The events were revealed by the witness for the respondent, Subramaniam a/l Veruthasalam, also known as Varath (Barat) Maniam, who, at the time of the three publications, was chairman of the Public Relations Committee at the MIC headquarters. The events, which he related by reference to the relevant letters, as to which learned Counsel for the plaintiff had no objection, were that by letter dated 27 September 1990, the Federal Treasury allotted ten million Syarikat Telekom Malaysia shares to Maika Holdings Bhd., but by letter dated 6 October 1990, it cancelled the original allotment and instead allotted one million shares only to Maika, and the other nine million shares equally to three other companies. This witness, as indeed the respondent himself, admitted he did not know of other Telecoms shares being allotted to Maika and neither was evidence produced for the respondent that there were other Telecoms shares allotted to Maika.

The newspaper was a Tamil language newspaper. The relevant publications were in Tamil. The Court, had to rely on English translations provided to the applicant by a Court interpreter. The respondent called another Court interpreter with a view to establishing that the translations were incorrect. The evidence of the interpreter, however, was confined mainly to the headlines for the news items concerned and amounted merely to saying that certain words therein could have been better rendered into English by other English words. He did not touch on the contents of the news items themselves because he had not been asked to compare them with the translations. He also commented on the format of the translations, such as the failure to present them in exactly the same visual arrangement as that in which the originals were published.

To my mind, for the purposes of the application, what really mattered was whether the translations conveyed substantially the meaning of the originals. The style of the translations or the elegance or preciseness of particular English words or expressions used were not material if the essential purport of the originals was conveyed.

The evidence of the interpreter did not establish that the translations had failed to convey the essential substance of the originals. I did not, have any doubt that the translations were reliable translations for the purposes of the proceedings.

I shall now recount the three publications.

The publication of 13 April 1994 reported what Varath Maniam purportedly said in a special interview given to the newspaper. What was principally being questioned or attacked was

an alleged purchase of three million Tenaga Nasional shares by the applicant, but what is of relevance to the Telecoms shares are the allegations that of the ten million Telecoms shares given by the Government for the Indian community, one million was reserved for Maika and the applicant "had planned to possess it for himself by asking to give the balance of 9 million shares to the three dummy companies" and that the applicant had, from the sale of those shares, obtained RM3,590,000 which he put into his account and out of which he withdrew RM3.5 million to contribute to the purchase of the Tenaga Nasional shares.

The implication from that is that the ten million shares which were originally meant for the Indian community had, by the applicant's doing, been reallocated so that one million only went to Maika (the Indian community) and nine million to three dummy companies controlled by the applicant so that he could get hold of the shares for himself.

In 20 April 1994 issue there were two relevant news items, both of which were highlighted by headlines on page 1.

The first news item on 20 April 1994 appeared on pages 4, 5, 6 and 7. It consisted of disclosures and allegations by Varath Maniam about the applicant's plan to appropriate TAFE College for himself instead, by forming TAFE College Sdn. Bhd., although it had been decided that it should be run by MIED. The following is a passage that is crucial to this application:

> It is an egregious lie to say that the MIC do not have enough fund to build the TAFE College. The Government had also given 80 lakhs (8 million) for TAFE College building expenses. If what Samy Vellu said was true that the expenses incurred for building the TAFE College was 20 million, he should have raised the balance of 12 million either by way of bank loan, sale of lottery tickets or through donations. But, Samy Vellu did not do that. The Government gave 10 million Telecoms shares through MAIKA for the poor Indian community and as such there was no necessity for him to reserve 1 million for MAIKA and cart away the balance of 9 million shares. He did not do that in the interest of community neither did he have interest in the development of TAFE College. He carted away the shares because of his narrow-minded thinking of becoming a millionaire and for his own self-interest.

The news item also reported Varath Maniam as alleging that after "the corrupt practice on Telecoms shares was exposed", the applicant, being in fear that he might be caught for his corruption", caused, by falsifying receipts and account books, MIED's account to be "prepared in such a way to show as if Samy Vellu sold the Telecoms shares and put the money on TAFE College".

The second news item on 20 April 1994 appeared at pages 14 and 15 and was presented as the reaction or response of Dato' K.S. Nijhar, a MIC Central Working Committee member, to the news published by the newspaper "for the past two weeks", which would include, the news on 13 April 1994.

Except towards the end of the news item, what Dato' Nijhar was reported to have said or replied was not accusative of anybody. There was, however, a statement by the writer relating what the applicant had said as to what he had done with the money from the sale of the nine million shares and questioning why, if that was true, the money was credited into his personal account. At the end of the news item, Dato' Nijhar was reported to have said, in answer to a question, that he would seek an explanation from the applicant whether he had put all the money from the sale of the Telecoms shares into MIED's account.

On 25 May 1994 the newspaper carried an entry which questioned how it had come about that RM666,000 from the sale of Telecoms shares was deposited into the account of one Roslin and what was the connection between her and the applicant. It also carried a notice reminding readers not to forget to read the applicant's "statement to ACA regarding the hijacking of Telecom shares in Thoothan on 1 June 1994".

The respondent was the chief or managing editor of the newspaper at the time of the three publications. He admitted in cross-examination that as chief editor he made decisions as to the matters that were to be published. He admitted he had read the news item that was published on 13 April 1994 before it was published. He admitted publishing the news items that appeared on 20 April 1994 and 5 May 1994. I did not have the slightest doubt that the respondent had authorized and willed the publication of those matters. I was satisfied that for the purposes of the injunction, he had, either by himself or by his servants or agents, published those matters.

The respondent contended that the news items were not about the ten million Telecoms shares allotted to Maika on or about October 1990, but were about the one million shares allotted subsequently to Maika and the nine million shares allotted subsequently to the three other companies. He, however, could not deny, and I think, from his answers in cross-examination, he knew very well, that those were the same shares that were originally allotted to Maika and that the cause of all the uproar was the subsequent reallotment of the ten million shares. The respondent's excuse was nothing more than a matter of splitting hairs.

The injunction ought to be reasonably and honestly construed, not only according to its precise literal terms but also in the light of the circumstances that led to the necessity of obtaining it. The respondent must have known that the purpose of the injunction was to prevent the publication of further defamatory allegations about the applicant concerning the affair of the 10 million Telecoms shares that were originally allotted to Maika and that such allegations could only arise from what happened subsequently to those shares and could not arise just from their original allotment to Maika. Knowing that, he went ahead to publish the news items, either in total disregard of the injunction or hoping that the purpose of the injunction could be defeated by the kind of sly and crooked interpretation that he was seeking to rely on. In either case, he had acted wilfully and with determination to disobey the injunction. He was contumacious.

I was satisfied that the respondent had committed contempt of Court. His offence was compounded and aggravated by the fact that in spite of having been served with the order granting the applicant leave to apply for committal and warned by the applicant's solicitors not to publish further articles about the applicant and the Telecoms shares, the respondent had continued to publish further matters in the newspaper on 1 June 1994. One article, which appeared as a revelation by Varath Maniam, said that three million Renong shares were bought from the proceeds of sale of 5.5 million Telecoms shares and that, had the ACA not started investigations, the Renong shares would have gone to the applicant. There was also a notice, which the respondent admitted having written himself, which said that "a trial is going to be held against Samy Vellu who had cheated the Indian Community by hijacking the Telecoms Shares," and which called on the Indian community to boycott him "for the pushing the community 20 years behind by robbing the Telecoms Shares".

The respondent had, on 29 August 1994, at a ceremony to launch a book written by himself, said: "Even if Samy Vellu succeeds in his attempt to send me to jail I will still continue

to write from the jail. I do not stand alone. The people are behind me" That statement appeared in the magazine called Idhhayam of the issue of 1 October 1994.

I was satisfied that the respondent had been determined to continue publishing attacks on the applicant in spite and in disregard of the Court order. In the witness-box he did not appear at all repentant. I therefore ordered that the respondent be committed to prison until such time as the Court, on his application under O. 52 r. 7(l), should see fit to discharge him.